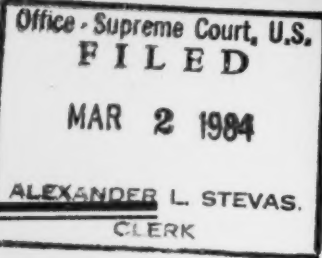


(4)
No. 83-1250



IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

KEWANEE OIL COMPANY,

Petitioner,

v.

BARBARA HOLMES, Executor of the
Estate of Elmer Holmes; EVELYN WOLKINS;
and SAM BAIER, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to
The Supreme Court of the State of Kansas

**MOTION TO DEFER CONSIDERATION OF
PETITION FOR A WRIT OF CERTIORARI**

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March 1984

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Petitioner Kewanee Oil Company¹ moves to defer consideration of the petition in this case until the petitions in *Ashland Oil, Inc. v. Good*, No. 83-1234; *Mobil Oil Corp. v. Batchelder*, No. 83-1248; and *Cities Serv. Oil Co. v. Matzen*, No. 83-1278, are considered. As indicated by their numbers, those petitions were filed at about the same time as this one. But the respondents in those cases have asked for and been granted an extension of time

¹ Kewanee is a subsidiary of Gulf Oil Corporation, which in turn is a wholly owned subsidiary of Gulf Corporation. Gulf's non-wholly owned subsidiaries and affiliates were listed in Appendix H of Kewanee's petition for certiorari.

until April 6, 1984, in which to file a brief in opposition. The brief in opposition to Kewanee's petition has been filed and this case is therefore ripe for consideration.

The petitions in Nos. 83-1234, 83-1248 and 83-1278 all seek review of the same decision of the Kansas Supreme Court, reported as *Matzen v. Cities Serv. Oil Co.*, 233 Kan. 846, 667 P.2d 333 (1983). Kewanee's petition asks for review of a different decision of the Kansas Supreme Court, *Holmes v. Kewanee Oil Co.*, 233 Kan. 544, 664 P.2d 1335 (1983). The parties and the facts in the two cases are different, but the issues are analytically the same or very nearly the same.

The *Matzen* petitioners are producers of natural gas that sold their gas to interstate customers and thus were subject to the price constraints imposed by the Federal Power Commission and its successor, the Federal Energy Regulatory Commission, under the Natural Gas Act. The Kansas court held that these producers were bound to make royalty payments to their lessor/landowners equal to a fraction of the maximum price for "new" gas prescribed by the FPC and the FERC even though their gas was "old" gas subject to a lower federal ceiling. Petitioners assert, *inter alia*, the inconsistency of that ruling with the Natural Gas Act, the Supremacy Clause, and the Commerce Clause.

This case concerns intrastate sales of gas made by petitioner Kewanee after the enactment in 1978 of the Natural Gas Policy Act, the successor to the Natural Gas Act, which extended federal rate regulation to such intrastate sales. The Kansas court ruled that Kewanee must make royalty payments to its lessor/landowners equal to a fraction of a statutory incentive price for gas from low-production wells (which Kewanee's wells were not) that is significantly higher than the price Kewanee

was permitted by the Natural Gas Policy Act to charge for its gas. Petitioner asserts that this ruling is inconsistent with the Natural Gas Policy Act and the Supremacy Clause.

The similarity of the issues in the cases, obvious we hope from the foregoing description, is recognized in the petitions: Kewanee's petition describes the two cases as presenting variants of the same basic question (p. 13); Ashland's petition in No. 83-1234 describes the cases as companion cases (p. 18); and Mobil's petition in No. 83-1248 speaks of them as taking the same "basic approach" (p. 25 n.32). Furthermore, the American Petroleum Institute and other organizations have just filed a brief amici curiae supporting in a single document the four petitions to review the two Kansas decisions. And we are given to understand that the Solicitor General will soon file on behalf of the FERC a brief amicus curiae in the *Matzen* cases in which he will suggest that the Kewanee petition ought also to be granted and the case heard together with the *Matzen* cases or that this case should be held to await the outcome of the others.

It is clear enough that this case involves more than merely the "interpretation and application to royalty payments of a rather unusual phase 'prevailing market rate,' in a few old, Barber County, Kansas, oil and gas leases." (Br. in Opp. 10.) The respondents would like it so, but both here and in the related *Matzen* case the Kansas

Supreme Court has exceeded the limits imposed by supreme federal law in stretching to read that lease term to favor Kansas landowners. The two cases should be considered together.

Respectfully submitted,

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